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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 28, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510-0103

Dear Senator Shelby:

Thank you for your letter of March 19, 1996, regarding the Commission's decision to freeze acceptance of paging applications. You express concern that the suspension of processing of paging applications will adversely affect the paging industry and urge us to lift the freeze for incumbent paging licensees.

In my view, our decision to suspend application processing in the paging proceeding advances two critical goals -- preservation of our ability to assign licenses through auctions, and deterrence of license fraud and speculation. In the paging proceeding, the Commission has proposed to transition from licensing on a transmitter-by-transmitter basis to a geographic licensing approach where single licenses are issued for geographic areas that encompass many sites. Such short-term freezes preserve our ability to assign spectrum using auctions where we receive competing applications for a single license. We decided to freeze application processing based on our conclusion that continuing to accept new applications under the current rules, after the industry had been notified of the proposed rule changes, would impair the objectives of the paging proceeding. In particular, we were concerned that the potential benefits of geographic area licensing, with competitive bidding used to select from among competing applicants, would be undermined by continuing to invite site-specific applications for "free" spectrum on a first-come, first-served basis. In this respect, the paging freeze is consistent with our approach in transitioning to geographic licensing and auctions in other wireless services, including Multipoint Distribution Service, 800 and 900 MHz Specialized Mobile Radio (SMR) Service, Location and Monitoring Service, 38 GHz Service and 220 MHz Service.

Assigning these frequencies by auction, in turn, helps deter fraud and speculation and ensures that this valuable public resource is assigned rapidly and efficiently to the parties who value it the most, rather than given away to the first party who files its application with the Commission. For example, just prior to the imposition of the paging application freeze, the Commission experienced significant increases in the filing of speculative applications for paging channels by application mills. In the three weeks preceding the imposition of the freeze, for instance, the Commission received over 1,700 common carrier paging applications compared to an average of approximately 700 applications per month during fiscal year 1995. A corresponding increase in applications occurred on private carrier paging channels, including 1,400 applications filed on a single day shortly before the freeze was adopted. Significantly, the Federal Trade Commission has stated with respect to paging that "clearly

the interim freeze against accepting new applications also has a strong deterrent effect on application mill fraud."

The Commission shares your concern that our rule making activities not impede the continued growth of the paging industry. Paging has an unparalleled record of offering consumers low cost wireless service from a great variety of discrete providers. To preserve and promote the vigorous competition that has long characterized paging during our transition to a less regulatory licensing scheme, the interim freeze was partially lifted for incumbent paging licensees on April 23, 1996, in the Commission's First Report and Order in (WT Docket No. 96-18.) Pursuant to that decision, incumbent paging licensees will be able to apply for new sites that are within 65 kilometers (40 miles) of an authorized and operating site. Those applications will be put on Public Notice and, if no competing application is filed, will be expeditiously processed, enabling incumbents to expand their service areas.

This limited relief from the paging freeze is appropriate to enable existing paging operators to meet customer needs and improve service to the public while the rulemaking is pending. We also believe that the relief as structured will accommodate growth of the industry during the brief period of time before final paging rules are adopted. At the same time, our decision to retain limitations on new applications during the interim period will prevent spectrum warehousing and deter application fraud. These interim rules will remain in effect until the Commission adopts final rules in the paging proceeding. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order in WT Docket No. 96-18.

I am convinced that the processing freeze we have imposed is necessary to achieve the Commission's objectives of ensuring fast, fair and efficient assignment of licenses and rapid deployment of service to the public. At the same time, I recognize the seriousness of the concerns raised by the paging industry regarding the economic impact of our suspension of processing, even in the short term, particularly on licensees that are small businesses. Notably, in a number of proceedings initiated to transition to geographic area licensing and auctions, including the paging proceeding, the Commission has proposed to adopt special provisions for small businesses such as bidding credits and installment payments. Because the paging industry is well-established, highly competitive and experiencing rapid growth in consumer demand, we found that the partial lifting of the freeze as described above would not compromise the objectives of the paging rulemaking.

The Honorable Richard Shelby

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I can assure you that we will move as quickly as possible regarding these issues and will carefully consider the comments of the paging industry and the general public, as well as the concerns stated in your letter, in making our decision.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reed E. Hundt', with a stylized, sweeping flourish extending to the right.

Reed E. Hundt
Chairman

Enclosure



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 388 (D.C. Cir. 1974).

Report No. DC 96-33

ACTION IN DOCKET CASE

April 24, 1996

FCC RELEASES INTERIM ORDER PARTIALLY LIFTING THE PAGING FREEZE FOR INCUMBENT LICENSEES (WT Docket No. 96-18, PP Docket No. 93-253)

The Federal Communications Commission released a *First Report and Order*, (*Order*) on April 23, 1996, which adopts interim measures governing the licensing of paging systems, effective upon publication of the *Order* in the Federal Register. This item will allow small and medium-sized paging companies to incrementally expand to serve their customers, upgrade their equipment to spectrum efficient technology, and compete with nationwide paging companies during the pendency of this rulemaking proceeding.

In the *Notice of Proposed Rulemaking*, adopted on February 8, 1996, the Commission suspended acceptance of new applications for paging channels. This freeze applied to all paging channels except the CCP nationwide channels and the exclusive PCP channels on which the licensees had earned nationwide exclusivity.

The *Order* partially lifts the interim freeze for incumbent paging licensees; clarifies that the formulas proposed in the *Notice of Proposed Rulemaking* are proposed for the final rules, and are not mandated for the interim period; (3) clarifies the internal minor modifications allowed during the interim period; and (4) provides that certain services are not subject to these interim measures. The *Order* states that the interim freeze is necessary to combat fraudulent paging application schemes, but that due to the highly competitive nature of the paging industry paging operators need some flexibility to modify and expand their systems.

- The Commission is lifting the paging application freeze for incumbent paging licensees, and will resume accepting applications for additional CCP and PCP transmission sites if (1) the applicant is an incumbent paging licensee, and (2) the applicant certifies that the proposed transmission site is within 65 kilometers (40 miles) of an authorized and operating transmission site which was licensed to the same applicant on the same channel on February 8, 1996. During this interim period all applications for exclusive 929 MHz channels and all CCP channels will be put on Public Notice.

- The Commission will accept initial applications for additional sites only from incumbents, as described above, but will accept competing applications from new applicants. If no competing application is filed, the incumbent's application can be granted. If a competing application is filed, the applications will be treated as mutually exclusive.

With respect to minor modifications, the Commission clarifies that the formula proposed in the *Notice of Proposed Rulemaking* for the interference contour is proposed for the final rules, and is not required during the interim period. Additionally, the Commission provides that on an interim basis 929 MHz licensees may use the tables in Section 22.537(f) to determine where stations may be added as internal system changes.

Additionally, the Commission provides that Basic Exchange Telecommunications Radio Systems (BETRS) and conventional Rural Radiotelephone Service are not mobile services and are not subject to the interim freeze in this proceeding. Additionally, Special Emergency Radio Service (SERS) is exempt from the interim freeze.

These rules set forth in the *Order* are effective upon publication of the *Order* in the Federal Register. These rules are only for use on an interim basis until the Commission adopts final rules in this rulemaking proceeding.

Action by the Commission April 22, 1996 by First Report and Order (FCC 96-183).
Chairman Hundt, Commissioners Quello, Ness and Chong.

- FCC -

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March 19, 1996

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The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to express my opposition to the decision by the Federal Communications Commission to place a freeze on the acceptance and processing of paging applications. The freeze includes applications for new or modified facilities filed by incumbent paging operators, pending the outcome of a Notice of Proposed Rulemaking (NPRM) which proposes to transition the industry to a geographic licensing approach, and to use auctions to award licenses in mutually exclusive situations.

Notwithstanding the merits of the NPRM, I believe it is unnecessary for the Commission to impose a freeze until this transition is complete. The freeze has already had a negative impact on the highly competitive and well-established paging industry. I urge you to lift the freeze on incumbent licensees immediately, while the NPRM is still under consideration.

Thank you for your time and consideration.

Sincerely,

Richard Shelby

Richard Shelby

RCS/tjy